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ALEXANDER L. STEVAS,
CLERK

No. 83-814

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BERRY AND GORE, LTD.,

Petitioner.

v.

ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

JOHN C. O'MALLEY
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Chicago, Illinois 60601
(312) 346-0690
Attorney for Respondent

James J. Grogan
Of Counsel

Merrill/Gunthorp Warren, Chicago • 372-2800

Appendix One

Chicago
April 13, 1983

Mr. William J. Martin
William J. Martin, Ltd.
33 North Dearborn Street - #930
Chicago, Illinois 60602

Dear Mr. Martin:

This letter is in furtherance of our conversation of March 3, 1983, and will delineate the scope of the Administrator's investigation of the law firm of Berry & Gore, Ltd. The Administrator's investigation has been stayed pending disposition of case M.R. 2588 in the Supreme Court of Illinois and, as to certain matters, at the request of the firm due to the pendency of a federal grand jury investigation. The Supreme Court denied the motion to quash subpoena in case M.R. 2588 on October 4, 1982 and the Administrator has not been advised that the grand jury investigation is continuing. The Administrator has determined that there is no impediment to the investigation going forward at this time.

BACKGROUND

The records of the Commission reveal that inquiries have been instituted against the firm or its employees in forty-one matters since January 1, 1978, the date the Commission's records were computerized. Manual records indicate that prior to 1978 thirty-two additional matters were considered. A copy of a listing of the forty-one matters referred to above,

reflecting the date of disposition or present status, is attached.

We have reviewed all matters relating to the firm and conclude:

- certain pending matters are ready for consideration and may be submitted to the Inquiry Board for decision without further delay;
- additional information is required as to certain pending matters; and
- the general practices of the firm, as revealed by all matters, warrant investigation. Such investigation will be conducted under the auspices of file number 83-CI-2510, a new matter.

PENDING MATTERS

Further information required in connection with pending matters is as follows:

80-CI-2217 atc The Administrator — File No. 80-CI-2217 arises from disclosures or allegations in the Chicago Sun Times (*The Accident Swindlers*). Messrs. Berry and Gore have not responded to the Administrator's letter of July 24, 1980; rather they have asserted the privilege against self-incrimination. The Administrator believes that the federal grand jury investigation in the matter has concluded without recommendation of formal action and the Administrator calls upon the firm to respond at this time;

80-CI- 21513 atc Fred Lenczewski — The firm requested a stay of the Administrator's investigation pending disposition of related civil litigation. Please relate the status of the litigation.

80-CI-21775 atc Stephen Curry, M.D. — The matter arises from a physician's allegation that he was not paid for services rendered from the proceeds of a settlement. Please forward a copy of the settlement distribution sheet reflecting disbursement in the matter at issue;

80-CI-2013 atc Felanthus Davis — Please identify Richard Flemming and describe his relationship with the firm. Specifically, state whether Flemming referred Davis to the firm and, if so, whether Flemming was paid for the referral;

82-CI-2211 atc Aristidis Tousis — Please describe the relationship of Alan M. Katz with the firm at any time; describe the nature of any agreement for referral of cases by the firm to Katz; and list all such referrals and account for any and all money paid to Katz by the firm, whether such payment is in the nature of fees or constitutes payment or reimbursement for staff or office;

82-CI-21618 atc Earl Davis — The Administrator inadvertently failed to forward the Davis complaint to the firm following the Supreme Court's disposition of case M.R. 2588. A copy of the complaint will be forwarded under separate cover;

82-CI-21713 atc Mary M. Nolen — Same as 82-CI-21618 above; and

83-CI-2493 atc Lolita Johnson — Ms. Johnson's complaint was received April 4, 1982 and will be forwarded under separate cover.

A review of all matters instituted against the firm, the information contained therein and the Administration's general investigation indicates that the firm's practices in several areas may amount to unethical conduct by attorneys employed by the firm. Those practices are:

- *Solicitation of professional employment*

The firm appears to be engaged in the systematic solicitation of legal employment. This practice includes payment to third persons for the referral of prospective clients to the firm;

- *Aiding the unauthorized practice of law*

The firm appears to employ persons who are not attorneys for the purpose of advising clients and negotiating and settling client claims;

- *Maintenance of unwarranted or spurious claims*

The firm appears to be engaged in the regular practice of referring clients to certain physicians, health practitioners and health treatment facilities for the purpose of generating apparently compensable expenses; and

- *Improper handling of client funds*

The firm may not properly account for funds generated by client claims. This includes the failure to preserve the identity of client funds and to promptly and/or fully account to the client for the handling of funds. The firm may delay transmitting or fail to transmit funds to third persons pursuant to settlement distribution agreements.

REQUEST FOR INFORMATION

The Administrator intends to take the statements of Bruce Berry and Richard Gore, as well as other employees of the firm. Prior to doing so, it will be necessary for the Administrator to obtain certain information from the firm. Please provide:

- All employment records and records of payment, whether salary, commission or otherwise, by the firm to either Arthur Reuter or Vincent Luisi from January 1, 1978 to the present. Include all original cancelled checks reflecting any payment to either Reuter or Luisi for any reason;

- A listing of all persons, including addresses, to whom money has been paid for referral of potential clients for the period January 1, 1978 to the present. Include an accounting of amounts paid and, if paid by check, copies of all original cancelled checks reflecting any such payment;

- A listing of all physicians, health practitioners and health treatment facilities, with addresses, to whom the firm has referred ten or more clients since January 1, 1978 to the present; and

- Original monthly bank statements and all cancelled checks for any account maintained by the firm into which settlement drafts, client funds, or client related funds have been deposited from January 1, 1978 to the present.

In order that the matter may go forward without delay, I am enclosing a subpoena duces tecum compelling the production of the information referred to above on or before May 13, 1983.

If you have any questions, please let me know.

Very truly yours,

John C. O'Malley

JCO' M :ms
Encs.

BRUCE S. BERRY AND RICHARD S. GORE

INQUIRY FILES

File Number	Complaining Witness	Status
78 CI 2215	Lucille Constant	AD 1/05/79
79 CI 2883	Thomas Augustyn	AD 12/19/79
79 CI 2884	Lillie M. Shine	PD 2/05/80
79 CI 2899	Edgar L. Sherard, Jr.	Open JCO'M - Panel G
79 CI 2916	Diana M. Howerton	AD 11/06/79
79 CI 21024	Jack W. Byans Aine M. Byans	AD 6/05/80
80 CI 2216	Carl H. Rolewick	AC 9/23/80
80 CI 2217	Carl H. Rolewick	Open JCO'M - Panel G
80 CI 2246	Lupe Giralamo	AD 6/05/80
80 CI 2332	Kristen Baier	Open JL - Panel G
80 CI 2361	Darnell Williams	Open JL
80 CI 2382	Earnesti Lanier	AD 7/10/80
80 CI 2414	Vergie Williams	AD 11/06/80
80 CI 2441	Sandra P. Burson	Open JL - Panel G
80 CI 2539	Alvin Winograd	AD 9/17/80
80 CI 2567	Jessie Moss	Open JCO'M - Panel G
80 CI 2677	Rosa Burgos	Open JL
80 CI 2888	William Benson III	Open JCO'M - Panel G
80 CI 21406	Joann Darden	AD 12/09/80
80 CI 21414	Jose D'Avila	Open JCO'M
80 CI 21466	James Moore	Open JCO'M - Panel G JJG
80 CI 21513	Angelo Karras Fred Lenczewski	Open JCO'M
80 CI 21775	Stephen Curry, M.D.	Open JCO'M - Panel G

File Number	Complaining Witness	Status
81 CI 2013	Felanthu Davis	Open JCO'M - Panel G
81 CI 2247	Walter Borom Willie Spencer	Open JCO'M
81 CI 2428	Bobby R. Chumley Ardell Holland Frank Lewis	Open JCO'M
81 CI 2958	Sheila Jackson	AD 9/29/81
81 CI 21211	George S. Butler Cheryl C. Taylor	AD 2/11/82
82 CI 2211	Aristidi Tousis	Open JCO'M - Panel G
82 CI 2441	William Johnson	Open JCO'M - Panel G JJG
82 CI 21202	Eddie R. Jackson, Sr.	AC 9/28/82
82 CI 21618	Earl Davis	Open JCO'M
82 CI 21713	Mary M. Nolen	Open JCO'M
83 CI 2117	Galvesto Dean	Open JJG
83 CI 2448	Edward Greenhill	Open JJG

Appendix Two

SUBPOENA DUCES TECUM—Supreme Court of Illinois—Before Administrator — Form 35

No. 83 CI 2510

STATE OF ILLINOIS,

ss.

SUPREME COURT

THE PEOPLE OF THE STATE OF ILLINOIS

TO Berry & Gore, Ltd.
205 West Wacker Drive - #2200
Chicago, Illinois 60606 GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you attend before the Administrator of the Attorney Disciplinary System on May 13, 1983, at 2:00 o'clock P.M. at Suite 1900, 203 N. Wabash Ave., in the City of Chicago, County of Cook, to testify and give evidence and the truth to speak in a certain investigation now being conducted by said Administrator relating to Attorney Berry & Gore, Ltd.

And that you also diligently and carefully search for, examine and inquire after and bring with you and produce at the time and place aforesaid all employment records and records of payment, whether salary, commission or otherwise, by the firm to either Arthur Reuter or Vincent Luisi from January 1, 1978 to the present. Include all original canceled checks reflecting payment to either Reuter or Luisi for any reason;

All lists, ledgers, records or documents of any kind reflecting the name or names of any person or persons to whom money has been paid for referral of potential clients from January 1, 1978 to the present. Specifically to be included is any record of money paid to any such person, and if paid by check, all original cancelled checks reflecting such payment;

All lists, ledgers, records or documents of any kind reflecting the name or names of any and all physicians, health practitioners and/or health treatment facilities to whom the firm has referred ten or more clients since January 1, 1978 to the present; and

All original monthly bank statements and all original canceled checks for any account maintained by the firm into which claim settlement drafts, client funds or client related funds have been deposited from January 1, 1978 to the present;

together with all copies, drafts and vouchers relating to the said documents, and all other documents, letters and paper writings whatsoever, that can or may afford any information or evidence in said investigation. And this you shall in no wise omit under penalty of the law.

WITNESS, JULEANN HORNYAK, Clerk of our said Court, and the Seal

thereof at Springfield, Illinois, this 13th day of April, 1983

.....Clerk.

Appendix Three

No. M.R. 3093

IN THE

Supreme Court Of Illinois

IN THE MATTER OF:

BRUCE S. BERRY AND RICHARD S. GORE,

Attorney-Respondents.

RESPONSE

Carl H. Rolewick, by his attorney John C. O'Malley, responds to the *Motion to Quash Subpoena Duces Tecum* filed in this matter and states:

BACKGROUND

The law firm of Berry and Gore, Ltd. has from time to time been the subject of complaints filed with the Attorney Registration and Disciplinary Commission by clients or other persons.

In connection with matters pending against them, attorneys Berry and Gore previously moved on December 23, 1980 to quash a subpoena duces tecum served upon them by the Commission. (Sup. Ct. No. M.R. 2588.) Consideration of the motion by the Court was deferred pending disposition of similar issues in the case of *In re Zisook, et al*, 88 Ill.2d 321, 430 N.E.2d 1037 (1981), (cert. denied, ___ U.S. ___, (1982).)

On October 4, 1982 the motion in case number M.R. 2588 was denied.

After denial of Respondents' motion in case number M.R. 2588, correspondence and conversation ensued between the Administrator and Respondents' attorneys. The parties sought to determine what matter remained at issue and/or what new issues may have been raised as the result of the

passage of time occasioned by the Court's consideration of *In re Zisook, et al*, 88 Ill.2d 321, 430 N.E.2d 1037 (1981).

THE INSTANT SUBPOENA

As a result of the above, the Administrator reviewed all matters involving Respondents and by letter dated April 13, 1983 sought to delineate the present scope of the Administrator's investigation. A copy of the Administrator's April 13, 1983 letter with enclosure is attached as Adminstrator's Exhibit One. The subpoena at issue in this matter was also enclosed with the Adminstrator's April 13, 1983 letter and is attached as Exhibit Two. Return of the subpoena was continued by agreement to afford Respondents time to prepare the instant motion.

The April 13, 1983 subpoena requests production of documents in four areas:

— employment records for two employees of the firm of Berry and Gore, Ltd.;

— all records regarding payment of money for referral of clients;

— records relating to physicians and/or treatment facilities to whom Respondents have referred ten or more clients; and

— all bank statements and cancelled checks for any account in which client funds are deposited.

The records requested are limited to the period January 1, 1978 to the present.

GROUNDS FOR MOTION

Respondents request that the subpoena at issue in this matter be quashed on the following grounds:

— the subpoena requires the production of voluminous documents where no pending complaint involves the requested information and no reasonable cause exists;

— the subpoena is unreasonable and overbroad in violation of the Fourth and Fourteenth Amendments to the United States Constitution and constitutes a "fishing expedition;" and

— the Administrator has exceeded the scope of the investigatory authority granted to him by the Court and Commission. (*Motion to Quash Subpoena Duces Tecum*, par. 3.)

QUESTION PRESENTED

Whether the April 13, 1983 subpoena compels the production of documents which are reasonably related to a lawfully authorized inquiry.

RESPONSE TO MOTION

I. MATTERS PENDING

1. Pursuant to the directives of Rule 753 and Commission Rule 1.1, the Administrator has instituted investigations involving Respondents in approximately seventy-three matters as of April 13, 1983. (See Exhibit One.)

2. Prior to April 13, 1983 the Administrator and the Inquiry Board considered each matter individually. As reflected by Commission records many matters have been dismissed and certain files remain pending. (Exhibit One.) On April 13, 1983 the Administrator initiated file number 83 CI 2510. File number 83-CI-2510 constitutes the Administrator's generalized investigation of the firm as compelled by the directives of Rule 753 and Commission Rule 1.1.

3. By his letter of April 13, 1983, the Administrator advised Respondents of the basis and scope of the investigation encompassed by file 83-CI-2510. In addition, the Administrator requested additional information regarding other pending matters.

II. THEORY OF INVESTIGATION

1. Respondents are principals in a firm which handles a large volume of personal injury and property damage claims.

2. Information contained in pending files suggests that the firm may engage in the following acts of professional misconduct as specified in the Administrator's April 13, 1983 letter:

(a) solicitation of professional business;

(b) aiding the unauthorized practice of law;

(c) maintenance of unwarranted or spurious claims; and

(d) improper handling of client funds.

3. The Administrator is particularly concerned that Respondents or their agents may engage in the practice of issuing multiple checks constituting the net proceeds due a client upon distribution of a claim. In such cases, under circumstances intended to confuse the client, one check is given to the client while the second check, reflecting the balance owing the client, will be retained by the attorney. The second check is then later negotiated by the attorney for cash. This practice, which is known as "chopping" the client, is a means whereby corrupt attorneys generate cash to be used either for personal purposes or for the purpose of paying for cases referred by a "chaser."

III. FACTS GIVING RISE TO SUBPOENA

1. As stated in the Administrator's April 13, 1983 letter, probable cause for the issuance of the subpoena in this matter emanates, at least in part, from information derived from the

Administrator's review of the many complaints filed against Respondents over the years, as corroborated by specific instances related below.

2. On March 3, 1982 Carol A. Maher gave a sworn statement. Ms. Maher, a former employee of the firm of Berry and Gore, Ltd., described the general practices of the firm which include:

— solicitation of legal business through the payment of "chasers" for cases;

— employment of non-attorneys for the purpose of advising clients and handling files;

— regular and systematic referral of clients by non-attorney employees to certain physicians or treatment facilities;

— unauthorized endorsement of releases and drafts;

— failure to pay doctors or other persons to whom money is owed upon settlement of claims;

— overdraft of firm accounts in which client funds are handled; and

— circumstances suggesting the issuance of multiple settlement drafts.

A copy of the March 3, 1982 sworn statement of Carol A. Maher is attached as Exhibit Three.

3. On June 25, 1979 the personal injury claim of Edgar Sherard was settled and distribution effected. A statement of settlement was prepared on that date reflecting that money was withheld for the payment of doctors. The Administrator's investigations disclosed that the doctors were not paid until September 23, 1980, after inquiry was instituted. Copies of the June 25, 1979 Statement of Settlement and the September 23, 1980 letter from William J. Martin, with relevant enclosures, is attached as Group Exhibit Four.

4. On October 30, 1980 Attorney Angelo W. Karsas, on behalf of Fred Lenczewski, alleged unauthorized endorsement and possible conversion of funds by Respondents in connection with an October 1978 settlement of a personal injury case for $23,000.00. Respondents have declined to respond for the reason that civil litigation is pending against them arising from the Lenczewski settlement. A copy of the October 30, 1980 letter from Angelo W. Karsas with enclosures is attached as Exhibit Five.

5. On June 9, 1980 William R. Benson, III, M.D. filed a complaint with the Administrator alleging nonpayment by Respondents for services rendered in connection with a case that had been settled. Respondents answered on September 16, 1980 enclosing a copy of a March 3, 1980 Statement of Settlement reflecting that money was withheld for payment of doctors. Respondents' answer reveals that the doctors involved were not paid until July 14, 1980 after the inquiry was instituted. A copy of the September 16, 1980 response with relevant enclosures, including the March 3, 1980 Statement of Settlement, is attached as Exhibit Six.

6. On December 22, 1980 Dr. Stephen J. Curry filed a complaint with the Administrator alleging non-payment for services rendered in connection with a case that had been settled. On April 1, 1981 respondents answered enclosing evidence of payment to Doctor Curry on March 25, 1981 after inquiry was instituted. Respondents allege that no money was withheld from the settlement for payment and enclose a copy of a November 1980 letter apparently supporting that assertion. Respondents state no statement of settlement is available. Copies of the December 22, 1980 complaint of Dr. Curry, the April 1, 1981 letter from Respondents' attorney with enclosures, and the May 4, 1983 letter from Respondents' attorneys are attached as Group Exhibit Seven.

7. On August 25, 1982 the personal injury claim of Earl Davis was settled and distribution effectuated. On that date Davis apparently signed a Statement of Settlement reflecting net disbursement to Davis in the amount of $33,473 and

endorsed two Berry and Gore, Ltd. checks payable to Davis in the amount of $29,000 and $4,473, respectively. On June 2, 1983 Davis gave a sworn statement wherein he indicated that the Statement of Settlement and checks were signed by him under circumstances of confusion and that he received only $29,000 in settlement of his claim. Investigation confirms that the $29,000 check was negotiated by Davis at his own bank and the $4,473 check was negotiated for cash at Respondents' bank under the authority of Respondent Berry. Copies of the August 25, 1982 Statement of Settlement and checks issued in connection therewith are attached as Group Exhibit Eight. A copy of the June 2, 1983 sworn statement of Earl Davis is attached as Exhibit Nine.

8. In connection with the matter referred to in paragraph 7 above, the Administrator obtained the sworn statement of Deborah Sparkman, the bank teller who negotiated the $4,473 check. Ms. Sparkman, an employee of the American National Bank and Trust Co. in Chicago where Respondents bank, indicated that she regularly negotiated third party checks drawn on Berry and Gore's account for Respondents Berry and Gore and for Respondent Berry's father. Ms. Sparkman further indicated that often several such checks were presented at one time for cashing and that to her knowledge clients were never present. A copy of the June 23, 1983 sworn statement of Deborah Sparkman is attached as Exhibit Ten.

9. On January 7, 1981 Felanthus Davis filed a complaint against Respondents. Mr. Davis' complaint indicated that after being involved in an accident he was approached by a man who came to his home and referred him to the firm of Berry and Gore, Ltd. The Administrator's investigation has identified the man referred to as Richard Flemming. Upon inquiry, Respondents advised that Richard Flemming is a former client of Berry and Gore, Ltd. who was not paid for referring Mr. Davis to the firm. Further investigation has revealed that if Mr. Davis is a former client of Respondents, he also appears to be in the business of soliciting personal

injury cases. A copy of the January 7, 1981 complaint of Felanthus Davis is attached as Exhibit Eleven. A copy of the May 12, 1983 letter from Respondents' attorneys is attached as Exhibit Twelve. Copies of Richard J. Flemming's business card and relevant telephone messages taken for Flemming by Rogers Radio Communication Services, Inc., which indicate the nature of Flemming's business, are attached as Group Exhibit Thirteen.

10. On July 24, 1980 the Administrator requested that Respondents reply to allegations made in connection with the Chicago Sun Times/WLS Television investigation, *The Accident Swindlers*. The investigation essentially revealed that reporters posing as accident victims met with non-attorney employees of Berry and Gore, Ltd. who coached them regarding feigned injuries. As of the present date, Respondents have declined to respond. Copies of the Administrator's July 24, 1980 letter and the May 4, 1983 letter from Respondents' attorneys with enclosures is attached as Group Exhibit Fourteen.

IV. Argument

Respondents argue that the April 13, 1983 subpoena was issued without "probable cause." It is difficult to quantify the basis for a subpoena. This Court has recognized " . . . neither the commissioners nor this Court are required to be naive or impractical in appraising an attorney's conduct." *In re Krasner*, 32 Ill. 2d 121, 127, 204 N.E.2d 10, 13 (1965). Certainly such a recognition, based on experience, plays a legitimate part in determining the course of an investigation.

Nevertheless, the Administrator has attached significant information to this pleading which initiated or corroborated each concern enunciated in the Administrator's April 13, 1983 letter. The subpoena issued in support of the letter is

specific, limited, and seeks only that information necessary to support or negate the Administrator's charges.[1]

Supreme Court Rule 752 provides, in pertinent part:

> Subject to the supervision of the Commission, the Administrator shall:
>
> > (a) On his own motion, on the recommendation of an Inquiry Board or at the instance of an aggrieved party, investigate conduct of attorneys which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute; . . . Ill. Rev. Stat. ch. 110A, §752 (1975).

To aid the Administrator in the performance of his duty, the Court enacted Supreme Court Rule 754 which provides, in pertinent part:

> Upon request of the Administrator . . . the Clerk of the Court shall issue subpoenas for the appearance of witnesses and subpoenas to require the production of books, records, papers and other items relevant to the matters under investigation or to pending cases. Ill. Rev. Stat. ch. 110A, §754 (1975).

An attorney whose conduct is questioned must appear and submit for examination whatever records are in his possession relevant to the inquiry. *In re Royal*, 29 Ill. 2d 458, 460, 194 N.E.2d 242, 243 (1963). The Administrator's authority to compel production of documents pursuant to subpoena has been affirmed. *In re Zisook, et al, supra.*

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1. For example, the Administrator has requested that Respondents identify only physicians and health care facilities to whom Respondents have referred ten or more clients. Further, the Administrator seeks information regarding only those accounts into which client funds are deposited rather than requesting all books, ledgers, and accounts, etc. (See Exhibit Two.)

Decisions by this Court upholding grand jury subpoenas compel the conclusion that the subpoena at issue in this case is appropriate. A subpoena duces tecum will be upheld even if it requires the production of a large amount of documents, as long as the subpoena is not unreasonably broad or irrelevant. *People* v. *Allen*, 410 Ill. 508, 103 N.E.2d 92 (1951). In that case this Court stated that it was obvious that no absolute rule could be laid down either as to the number of books and records which could be compelled to be produced or as to the time period which they could cover. The reasonable scope of an investigation depends upon what is being investigated. *Id.* at 514, 103 N.E.2d at 95.

Further, it is not necessary that a "cause" or a "specific charge" be pending before a grand jury as a condition of its right to command the production of documents. *People* v. *Allen*, supra; *People* v. *Dorr*, 47 Ill.2d 458, 265 N.E.2d 601 (1971). The very purpose of a grand jury inquiry is to uncover matters previously unknown. *People* v. *Dorr*, 47 Ill.2d at 462, 103 N.E.2d at 603. Grand jury investigations seeking to ascertain violations must be given the broadest scope possible, consistent with constitutional limitations. *Id.*

The United States Supreme Court has considered the constitutional implications raised by Respondents. In *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946), the Supreme Court considered the right of the Administrator of the Wage and Hour Division of the Department of Labor to judicial enforcement of a subpoena issued by him in connection with investigations conducted in accordance with the Fair Labor Standards Act. The Supreme Court considered the question of whether enforcement of a subpoena would violate rights secured by the Fourth Amendment. The petitioners therein claimed that the wage Administrator sought to conduct general "fishing expeditions" into books, records and papers in order to secure evidence without a prior charge or complaint.

The Court held that the Fourth Amendment guards against abuse of the subpoena power only by way of too much

indefiniteness or breadth in the things required to be produced. The gist of the Fourth Amendment protection is that the disclosure shall not be unreasonable. *Id.* at 208. The requirement of probable cause is satisfied when the subpoena is issued by a body which has lawful authority to investigate and the subpoena is issued for a lawfully recognized purpose. Also, the documents sought must be relevant to the inquiry. *Id.* at 209. Reasonableness requires that the documents requested must be adequate, but not excessive, for the purposes of the relevant inquiry. Reasonableness cannot be reduced to a formula. What is relevant or excessive in breadth is variable in relation to the nature, purposes and scope of the inquiry. *Id.*

The Court further reasoned that if the petitioners' Fourth Amendment arguments were accepted, much, if not all, investigations in the public interest would stop at the threshold of inquiry. This would make any powers or duties of investigation impossible. *Id.* at 213.

In *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950) the Federal Trade Commission ordered the Morton Salt Company to produce certain papers, documents and books to show compliance with a prior cease and desist order. The company refused to comply on the grounds that the Commission did not have the authority to require them to produce such documents and that the order to do so violated the Fourth Amendment. The company argued that since the Commission made no charge of a violation of the cease and desist order, it was engaged in a mere "fishing expedition" to see if it could turn up evidence of guilt. *Id.* at 641.

The Supreme Court stated that the FTC, like other commissions, has power similar to that of a grand jury. It does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that a law is being violated, or even because it wants assurance that it is not. When investigative and accusatory duties are delegated to an administrative body, it may take steps to inform itself

whether there is a probable violation of the law. *Id.* at 642, 643.

Respondents herein refer to several cases in which subpoenas have not been upheld. In these cases, the subpoenas at issue were unreasonably broad in their demands and general in their terms. In *People* v. *Keefe*, 36 Ill.2d 460, 233 N.E.2d 144 (1967), the description of the documents requested in the subpoenas was so insufficient that the respondents could not determine what was to be produced. In *People* v. *Lurie*, 39 Ill.2d 331, 235 N.E.2d 637 (1968), another case which the respondents cite, the Supreme Court held that a subpoena which demanded that a corporation produce its general ledger, accounts receivable and accounts payable, cash receipts and disbursements journals, payroll ledger, bank statements and cancelled checks was unreasonably broad. The documents provided only a tenuous relationship to the investigation being conducted.

In this case, the information sought is specific and limited and relates to information and allegations in the Administrator's possession which compel resolution.

CONCLUSION

The information in the Administrator's possession is suggestive of substantial misconduct. If such is the case, the interests of the Court, the profession, and the public require that formal charges be brought. If such is not the case, respondents are entitled to be exonerated. In either case, the information sought is necessary in order that the question be resolved. If the Administrator is not allowed to go forward in matters such as these, effective disciplinary enforcement is impossible.

Respectfully submitted,

/s/ JOHN C. O'MALLEY

JOHN C. O'MALLEY
Counsel for the Administrator

John C. O'Malley
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Disciplinary Commission
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